

Supreme Court, U. S.

FILED

MAY 15 1978

MICHAEL RODAK, JR., CLERK

---

SUPREME COURT of the UNITED STATES

---

October Term, 1977

No. 77-1451

---

AGNES S. YOUNG,  
Petitioner,

VS.

BOARD OF TRUSTEES,  
UNIVERSITY OF TOLEDO, et al.,  
Respondent.

---

ON PETITION FOR WRIT OF CERTIORARI TO THE  
SUPREME COURT OF THE STATE OF OHIO

---

---

BRIEF OF RESPONDENT IN OPPOSITION

---

B. GARY McBRIDE,  
Special Counsel for the  
Attorney General, State of  
Ohio

THEODORE M. ROWEN  
Of Counsel

---

TABLE OF CONTENTS

---

Statement of the Case.....	1
Statement of the Facts .....	4
Reasons for Denying the Writ--	
A. Certiorari should be denied in cases which involve solely a question of the weight of the evidence. ....	7
B. There is no conflict with prior decisions of this Court.....	8
Conclusion .....	10

TABLE OF AUTHORITIES

---

Cases

<u>Bell v. Burson</u> , 402 U.S. 535 (1971).....	9
<u>Board of Regents of State Colleges v. Roth</u> , 408 U.S. 564 (1972).....	9
<u>Matthews v. Eldridge</u> , 424 U.S. 319 (1976)....	9
<u>N.L.R.B. v. Pittsburgh Steamship Co., 340 U.S. 498 (1951)</u> .....	8
<u>Perry v. Sinderman</u> , 408 U.S. 593 (1972).....	9
<u>Rogers v. Missouri P.R. Co.</u> , 352 U.S. 559 (1957) .....	8
<u>Southern Power Co. v. North Carolina Public Service Co.</u> , 263 U.S. 508 (1924)....	8

II

---

<u>United States v. Johnson</u> , 268 U.S. 220 (1925) .....	8
--	---

Constitutional Provisions and Statutes

United States Constitution, Amendment XIV....	6
---	---

SUPREME COURT of the UNITED STATES

October Term, 1977

No. 77-1451

AGNES S. YOUNG  
Petitioner,

VS.

BOARD OF TRUSTEES,  
UNIVERSITY OF TOLEDO, et al.,  
Respondent.

BRIEF OF RESPONDENT IN OPPOSITION

STATEMENT OF THE CASE

Agnes S. Young, hereinafter Petitioner, has filed a petition for certiorari based upon the alleged wrongful termination of a teacher, who had been employed by the University of Toledo, hereinafter Respondent. Petitioner's case is based upon the conten-

tion that the contract which she had for the academic year 1972-1973 had been terminated by Respondent improperly. On January 31, 1974, the Court of Common Pleas of Lucas County, Ohio, held that there was no genuine issue as to any material fact and that as a matter of law, Respondent was entitled to summary judgment. An appeal was taken from that judgment to the Court of Appeals of Ohio, Sixth District, County of Lucas.

On August 16, 1974, in C.A. No. 7629, the Court of Appeals of Ohio for the Sixth District held that since Petitioner had a valid teaching contract with Respondent for the academic year 1972-1973, and received a belated notice of termination of contract by Respondent, that relieved Petitioner as a teacher from any duty to respond to such notice and from any duty to utilize the administrative review procedures provided by the Rules and Regulations of Respondent. The Court of Appeals

for the Sixth District further stated that Petitioner had the right to pursue a claim for breach of contract.

Pursuant to the reversal and remand to the trial court, the case was assigned to another judge. On April 26, 1976, a three-day jury trial commenced. On April 30, 1976, a unanimous jury returned a verdict for Respondent. Upon the insistence of Petitioner, the jury of eight was polled, and each juror affirmed that the verdict for Respondent was his or her verdict.

Petitioner then filed a motion for a new trial and a motion for judgment notwithstanding the verdict. The trial court denied both motions, and from those denials and from the jury verdict for Respondent, once again, Petitioner filed a notice of appeal with the Court of Appeals for the Sixth District in C.A. No. L-76-303. On September 23, 1977,

the Court of Appeals for the Sixth District held substantial justice had been done, the jury verdict was fully proper, and each alleged assignment of error raised was not well taken. Accordingly, the Court of Appeals remanded the case to the trial court for the execution of judgment. On October 19, 1977, Petitioner filed in the Court of Appeals for the Sixth District a notice of appeal to the Supreme Court of Ohio. On January 13, 1978, the Supreme Court of Ohio dismissed the appeal, since the appeal did not involve a substantial constitutional question nor did it raise an issue of public or great general interest.

Thereafter, Petitioner filed this petition for writ of certiorari.

#### STATEMENT OF THE FACTS

Petitioner was employed by Respondent as a teacher at the University of Toledo through the academic year of 1971-1972. On June 5,

1972, a letter was sent to Petitioner from the then president of Respondent, informing Petitioner that she would not be offered a contract for the 1973-1974 academic year. Also, Petitioner was informed that she would not be offered a contract for the next academic year, 1972-1973. In a letter from Counsel for Respondent, Counsel for Petitioner was informed of the non-renewal of Petitioner's contract for the academic year 1973-1974, that the notice of termination of her "expectation" that she would be employed by Respondent for the academic year 1972-1973 could be appealed, and the procedure which was available for the review of the termination. The notification furnished to Petitioner by Respondent, stated the grounds upon which Plaintiff would not be offered a contract for the 1973-1974 academic year,

and the reasons for the termination of the "expectation" for the 1972-1973 academic year.

Petitioner elected not to initiate the administrative procedure afforded her as she did not furnish notice to the president, vice president of academic affairs, nor the dean of her college, demanding a hearing from the termination of her "entitlement" or "expectation".

The notice furnished to Petitioner complied with the University regulations governing the termination or non-renewal of a tenured faculty member, and complied with the procedural and substantive due process requirements of the Fourteenth Amendment to the United States Constitution. Petitioner was afforded an adequate notice and an opportunity to have a hearing prior to the effective termination of benefits.

The hearing which was provided under the University Regulations satisfied all of the due process requirements which must be afforded Petitioner prior to the termination of employment.

#### REASONS FOR DENYING THE WRIT

---

**A. CERTIORARI SHOULD BE DENIED IN CASES WHICH INVOLVE SOLELY A QUESTION OF THE WEIGHT OF THE EVIDENCE.**

The gravamen of Petitioner's filing the petition for certiorari is dissatisfaction with the jury verdict, with the Court of Appeal's review of the evidence, and with the Supreme Court of Ohio's conclusion that the appeal did not involve a substantial constitutional question, nor did it raise an issue of public or great general interest.

The Court of Appeals for the Sixth District of Ohio has reviewed the record on the merits and determined that the allegations of Pe-

titioner concerning the weight of the evidence are not well taken. This Court has reiterated on numerous occasions that certiorari will be denied in cases involving solely a question of whether the Court of Appeals fairly assessed the record and made correct factual conclusions, which is the situation with the case at bar. N.L.R.B. v. Pittsburgh Steamship Co., 340 U.S. 498 (1951); Rogers v. Missouri P.R. Co., 352 U.S. 559 (1957) (Separate opinions of Justices Frankfurter, Harlan and Burton); United States v. Johnson 268 U.S. 220 (1925); Southern Power Co. v. North Carolina Public Service Co., 263 U.S. 508 (1924). Accordingly, the writ of certiorari should be denied.

**B. THERE IS NO CONFLICT WITH PRIOR DECISIONS OF THIS COURT.**

Petitioner contends that the instant case conflicts with the applicable decisions of

this Court and in particular with Board of Regents v. Roth, 408 U.S. 564 (1972); Bell v. Burson, 402 U.S. 535 (1971) and Perry v. Sinderman, 408 U.S. 593 (1972). The contention of Petitioner is not well taken.

In Matthews v. Eldridge, 424 U.S. 319 (1976), this Court held that there is no requirement that a hearing be conducted prior to the termination of a right, providing that the hearing which is afforded is offered " . . . at a meaningful time and in a meaningful manner". Full due process was afforded Petitioner.

The instant case is merely a garden variety breach of contract case which turned on the question of whether there was just cause for the termination of Petitioner. At the insistence of Petitioner, this question of fact was unanimously resolved in

favor of Respondent by the sole determiner of facts--the jury.

#### CONCLUSION

It is therefore respectfully submitted that the decision in the instant case, as affirmed by the Sixth District Court of Appeals, the appeal of which was dismissed by the Supreme Court of Ohio, is not in conflict with any prior decisions of this Court, and does not pertain to a federal question of substance which has not heretofore been decided by this Court, and therefore the petition for certiorari ought to be denied.

Respectfully submitted,

B. GARY McBRIDE  
Special Counsel for the  
Attorney General,  
State of Ohio

THEODORE M. ROWEN,  
Of Counsel

#### CERTIFICATION

I, Theodore M. Rowen, am one of the

attorneys for Respondent, and have simultaneously with the filing of this Brief of Respondent in Opposition to the Petition for Certiorari, submitted an application for admission to practice in this Court, and on this 12th day of May, 1978, served a copy of the Brief of Respondent in Opposition to the Petition for Certiorari on Petitioner, Agnes S. Young, by mailing a copy which was duly addressed with first-class postage prepaid, to her attorney of record as follows: Martin L. Hanna, Esquire, Hanna Law Building, Bowling Green, Ohio 43402.

It is further certified that all parties required to be served have been served.

THEODORE M. ROWEN,  
Of Counsel